

Social Security Disability Claims today

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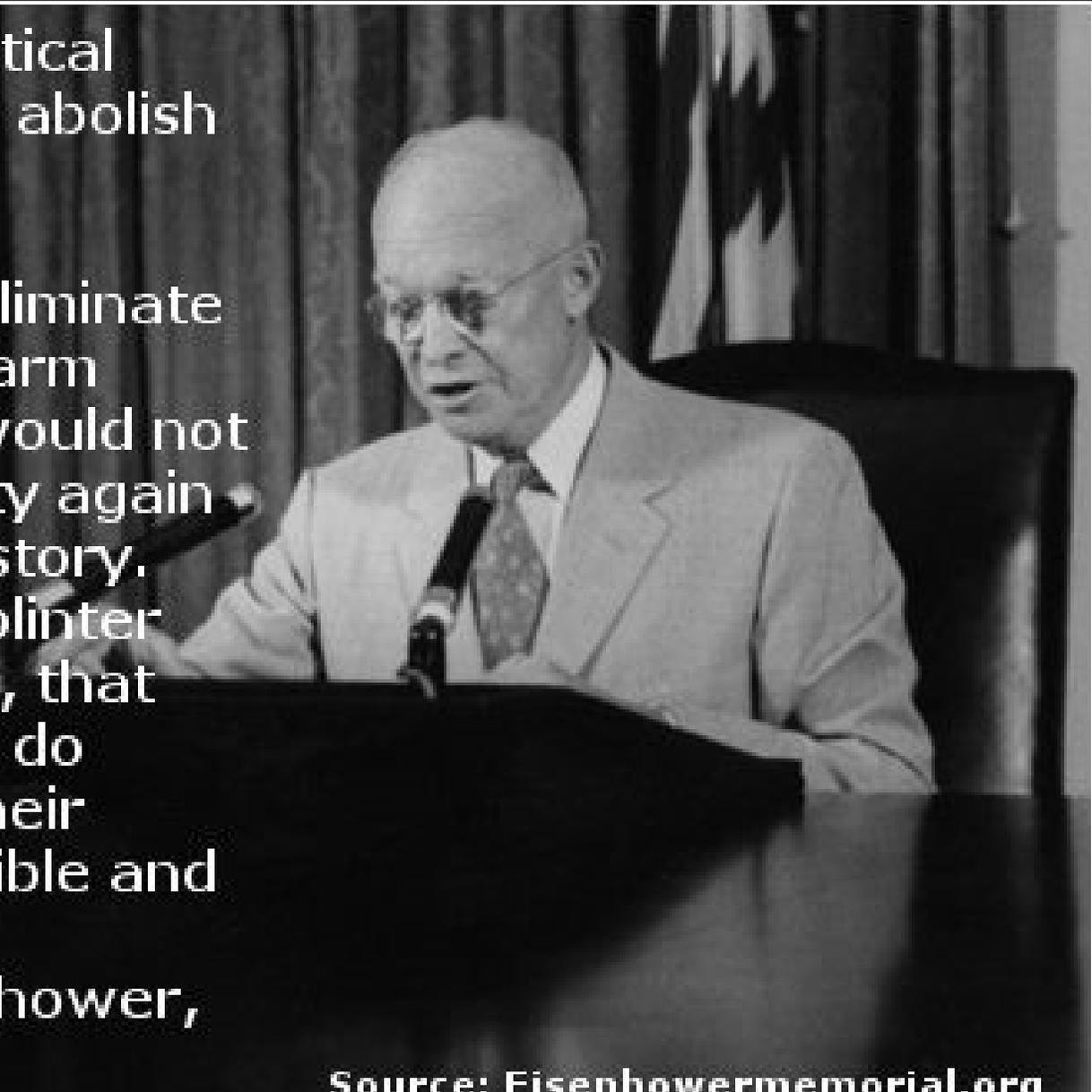
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Evolution of Social Security Disability

- "We will...endeavor to administer the disability [program] efficiently and effectively, [and]... to help rehabilitate the disabled so that they may return to useful employment... I am hopeful that this new law... will advance the economic security of the American people."
- -- Dwight D. Eisenhower, August 1, 1956

A black and white photograph of President Dwight D. Eisenhower. He is seated at a dark wooden podium, wearing a light-colored suit jacket, a white shirt, and a patterned tie. He is looking down at papers on the podium and speaking into a microphone. The background consists of a dark curtain and a portion of the American flag is visible on the right side.

"Should any political party attempt to abolish social security, unemployment insurance, and eliminate labor laws and farm programs, you would not hear of that party again in our political history. There is a tiny splinter group, of course, that believes you can do these things...Their number is negligible and they are stupid."

-President Eisenhower,
1954

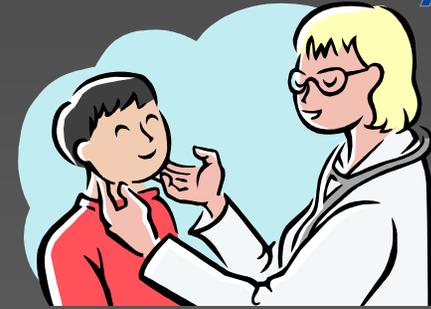
Source: EisenhowerMemorial.org

SSA's Definition of "Disability" for Adults

- "The inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

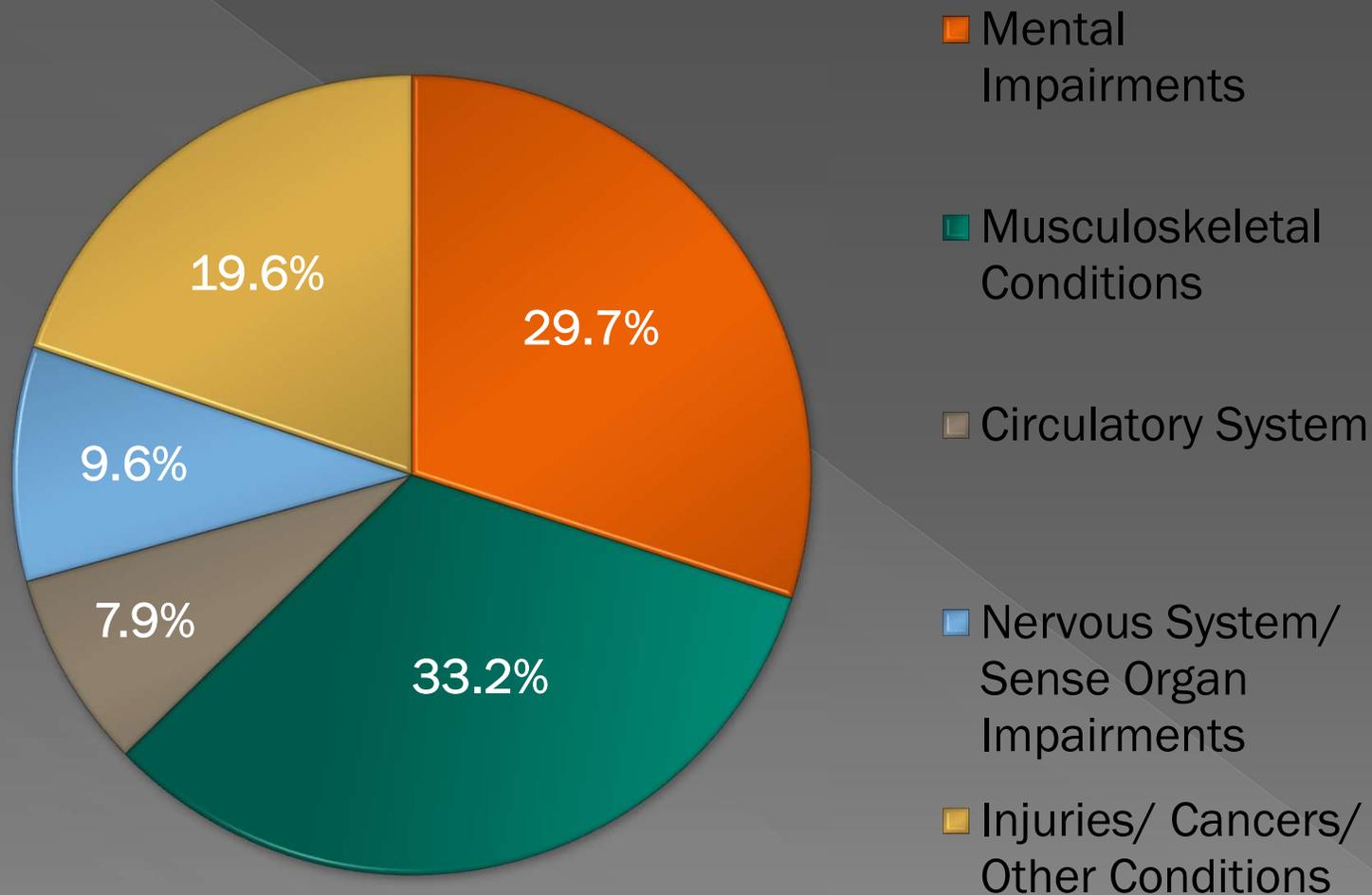


SSA's Definition of "Disability" for Children

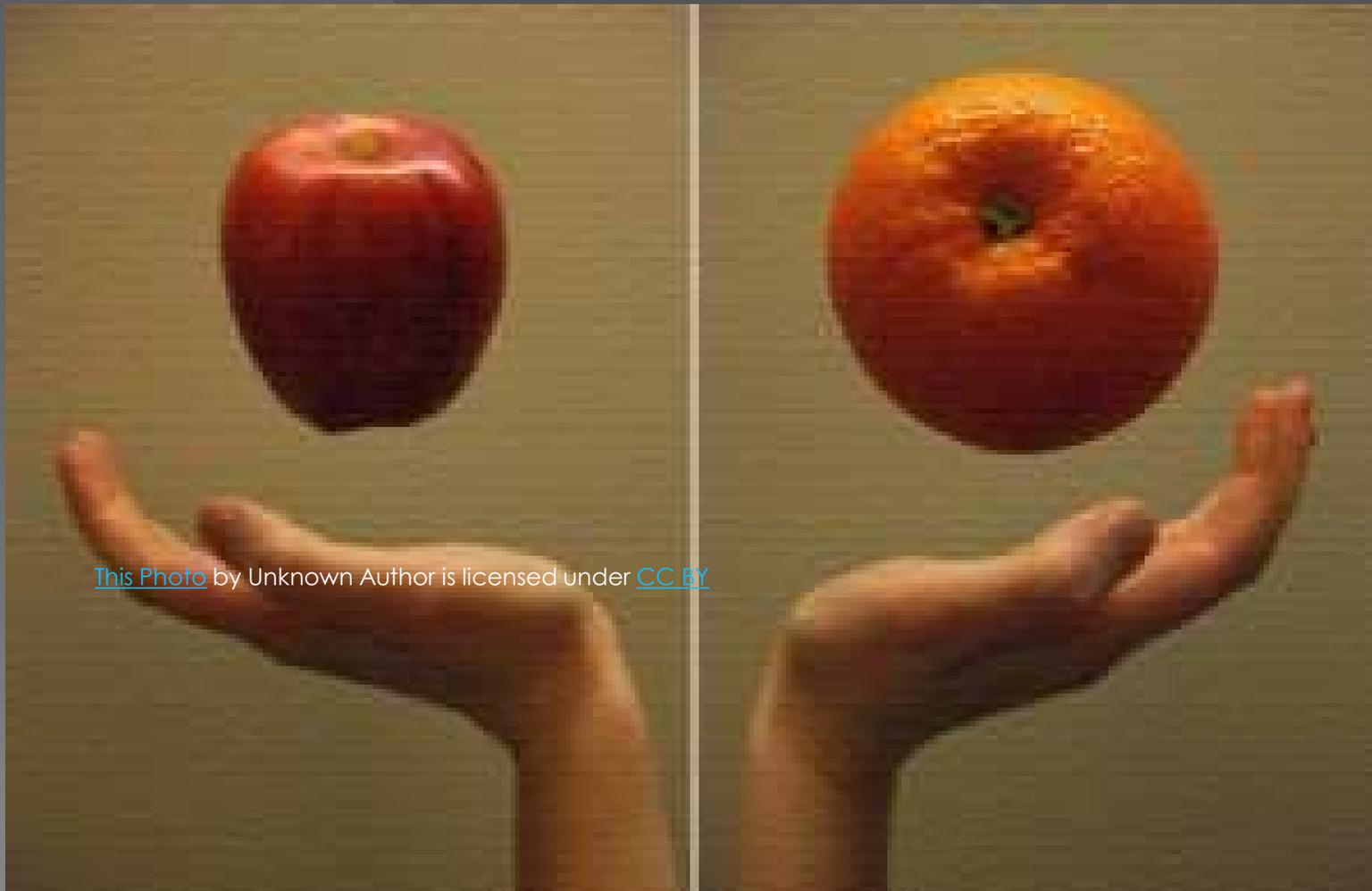


- “A child under age 18 will be considered disabled if he or she has a medically determinable physical or mental impairment(s) that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted [or will last] for a continuous period of not less than 12 months.”

What are the Most Common Disabilities for DI Recipients?



Comparing SSD to SSI



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SSDI (Social Security Disability Insurance Benefits (Title II))

- In addition to meeting the definition of disability, you must have worked long enough — and recently enough — under Social Security to qualify for disability benefits.
- Social Security work credits are based on total yearly wages or self-employment income. You can earn up to 4 credits each year.
- The amount needed for a work credit changes from year to year. In 2023, for example, you earn 1 credit for each \$1,640 in wages or self-employment income. When you've earned \$6,560 you've earned your 4 credits for the year.
- The number of work credits you need to qualify for disability benefits depends on your age when your disability begins. Generally, you need 40 credits, 20 of which were earned in the last 10 years ending with the year your disability begins. However, younger workers may qualify with fewer credits

SSDI Example: PIA (primary insurance amount) = \$1413.60

05	CCCC	20835.16	H	27425.88
06	CCCC	20739.15	H	26099.87
07	CCCC	24807.79	H	29864.87
08	CCCC	9856.46		11598.88
09	CCCC	9012.89		10768.58
10	CCCC	17728.69	H	20693.12
11	CCCC	19307.12	H	21850.82
12	CCCC	6943.00		7619.80
13	CCCC	8379.08		9079.82
14	CCCC	12248.36	L	12817.71
15	CCCC	19026.38	H	19241.38
16	CCCC	8190.12		8190.12
17	CCCC	9105.81		9105.81
18	CCNN	3053.94		3053.94

SSI was added....1972



Social Security Supplemental Income (SSI) Title XVI

SSI benefits are part of a “welfare” program, so other sources of household income can affect the amount of money you will get each month, whereas SSD benefits are considered part of an “insurance” program, so other sources of income or assets are irrelevant.

SSI benefits are paid starting in the first full month after you apply or are found disabled (whichever comes first), while SSD benefits do not begin until five months after your disability was found to have started.

SSI CONTINUED-2023 RESOURCE LIMITS

Gross wages or net self-employment income

Less than \$1,913 per month in wages (before taxes and other deductions) or self-employment (after deduction of allowable business expenses) if you are an individual.

Less than \$2,827 per month in wages (before taxes and other deductions) or self-employment (after deduction of allowable business expenses) if you are a couple.

Note: If you have a disability and have other expenses related to work you may still be eligible for SSI.

Income from pensions or gifts, etc.

Less than \$934 per month if you are an individual.

Less than \$1,391 per month if you are a couple.

Resources (things you own)

Less than \$2,000 total if you are an individual.

Less than \$3,000 total if you are a couple.

Note: We automatically exclude some things like ABLE accounts, some trusts, and some burial funds. You may be eligible even if you think you have resources over these limits.

APPLYING FOR DISABILITY

- Step 1 — Go to www.ssa.gov/benefits/disability and select “Apply for Disability.”
- Step 2 — Fill out the Disability Benefit Application.
- Step 3 — Answer the disability questions.
- Step 4 — Mail or take the documents to the Social Security office.

...So is it easy?

- Your Social Security number.
- If you were born outside the United States or its territories, the name of your birth country at the time of your 3 birth (it may have a different name now), Permanent Resident Card number (if you are not a U.S. citizen).
- If you were in the military service, the type of duty and branch, and also your service period.
- Your W-2 Form from last year or, if you were self-employed, your federal income tax return (IRS 1040 and Schedules C and SE).
- Direct deposit numbers (from a check, or ask your financial institution for the numbers) to have your monthly benefits deposited automatically.
- Information about any workers' compensation claim you have filed, including date of injury, claim number, and proof of any payments made to you.
- The name, address, and phone number of someone who knows about your condition and can help with your claim.
- Information about your illnesses, injuries, and conditions, including dates of treatment, and patient ID numbers; and the names, addresses, and phone numbers of the medical providers who treated you.
- Names and dates of medical tests you have had and who requested the tests.
- Names of medicines you are taking and who prescribed them.
- Medical records that you already have.
- A list of up to five jobs and dates you worked during the last 15 years.

Building Support for the Claim

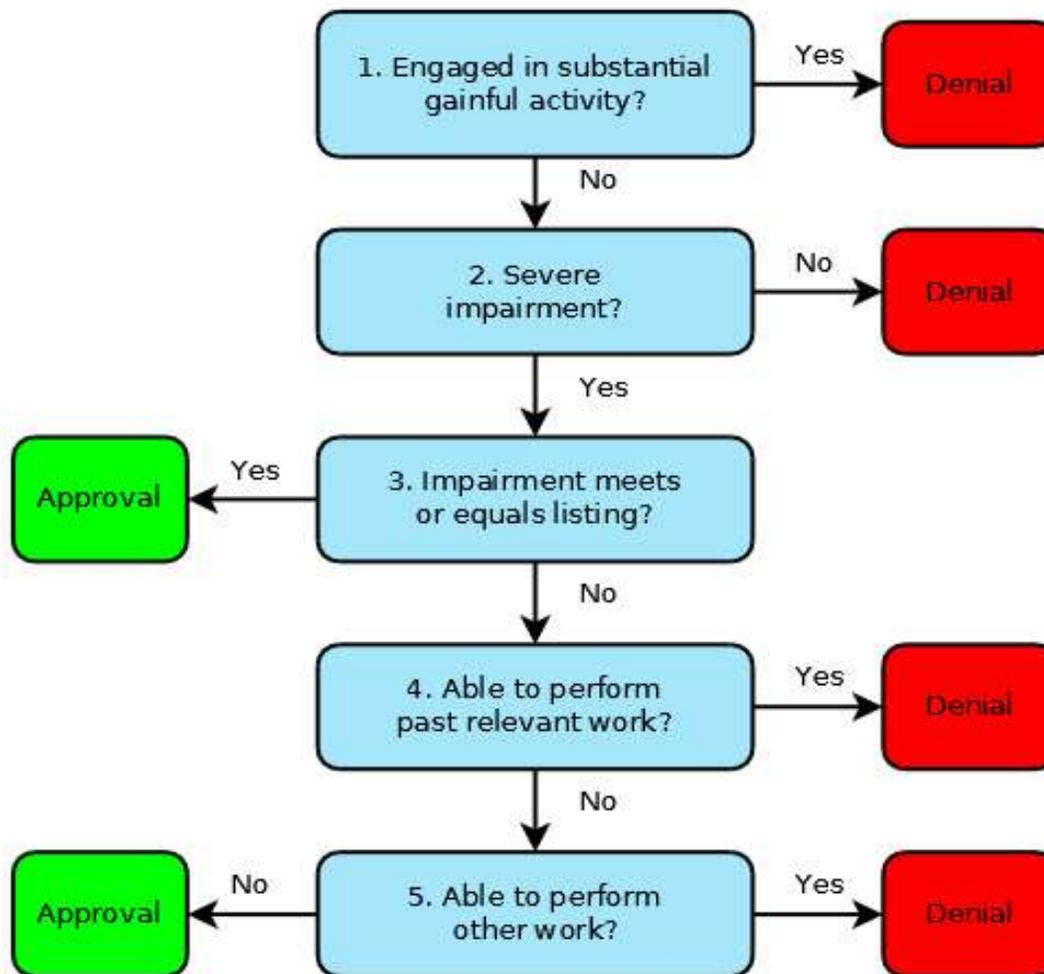
1. Medical Records
2. Physician/provider letters
3. FCE's (Functional Capacity Exams)
4. Consultative Exams
5. Performance Reviews/Transcripts

RECONSIDERATION

- 60 DAYS
- NEW OR WORSENING CONDITION
- 12 MONTH RULE
- ALJ Hearing Request

5-Step Evaluation Procedure

Social Security Disability Benefits: The Five-Step Determination Process



Step One

- ◉ Engaged in Substantial Gainful Activity?
 - > Earning more than \$1470 per money OR
 - > Working 40 hours per week



Step Two-Severe Impairment

- Does the Claimant suffer from a severe impairment?
- Severe impairment is different from a listing



Step three-do the impairments meet or equal the listings?



Example of a “Listed Impairment”

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in [4.00D2](#). The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see [4.00D1a\(i\)](#)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or
2. Diastolic failure (see [4.00D1a\(ii\)](#)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or
2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see [4.00A3e](#)), with evidence of fluid retention (see [4.00D2b\(ii\)](#)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see [4.00D4c](#)); or
3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:
 - a. Dyspnea, fatigue, palpitations, or chest discomfort; or
 - b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or
 - c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see [4.00D4d](#)) due to left ventricular dysfunction, despite an increase in workload; or
 - d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

Step three-meeting vs. equaling the listings

Meeting the Listings



Step Three-Equaling the Listings

- Claimant has a combination of impairments, but none of them meet a disability listing individually. Social Security will look at listings that are very similar to the impairments, and if the combined effect of the impairments is medically equal to the impairments found in the similar listing, Claimant will be found to equal the listing.

Example of equaling a listing

- An individual who suffered regularly from pseudoseizures, which are seizures that are not attributed to any abnormal brain activity and are usually caused by psychological issues, tried to equal the disability listing for epileptic seizures. The pseudoseizures occurred weekly and affected the applicant's ability to function during the day, which is one way to meet the epilepsy listing. Social Security found that the pseudoseizures equaled the epilepsy listing in both severity and duration.

STEP FOUR

Step 4: Can severely impaired applicants work in their past jobs? At this step, the SSA considers whether an applicant's residual functional capacity (RFC) meets the skill and task requirements of his or her past relevant work.



RFC (RESIDUAL FUNCTIONAL CAPACITY)

- The claimant's functional capacity (ability to work) that remains after taking into account the claimant's mental or physical disability.

Physical Residual Functional Capacity

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A. EXERTIONAL LIMITATIONS

None established. (Proceed to section B.)

1. **Occasionally** lift and/or carry (including upward pulling)
(maximum) - when less than one-third of the time or less than 10 pounds, explain the amount (time/pounds) in item 6.

less than 10 pounds
 10 pounds
 20 pounds
 50 pounds
 100 pounds or more

2. **Frequently** lift and/or carry (including upward pulling)
(maximum) - when less than two-thirds of the time or less than 10 pounds, explain the amount (time/pounds) in item 6.

less than 10 pounds
 10 pounds
 25 pounds
 50 pounds or more

3. Stand and/or walk (with normal breaks) for a total of -

Mental Residual Functional Capacity

http://ssaconnect.com/tfiles/SSA-4734-F4-SUP.pdf

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Google Mental Residual functional capacity form

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Tools Sign Comment

Please fill out the following form. You cannot save data typed into this form. Please print your completed form if you would like a copy for your records. Highlight Existing Fields

	Not Significantly Limited	Moderately Limited	Markedly Limited	No Evidence of Limitation in this Category	Not Ratable on Available Evidence
A. <u>UNDERSTANDING AND MEMORY</u>					
1. The ability to remember locations and work-like procedures.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
2. The ability to understand and remember very short and simple instructions.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
3. The ability to understand and remember detailed instructions.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
B. <u>SUSTAINED CONCENTRATION AND PERSISTENCE</u>					
4. The ability to carry out very short and simple instructions.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
5. The ability to carry out detailed instructions.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
6. The ability to maintain attention and concentration for extended periods.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
7. The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>
8. The ability to sustain an ordinary routine	1. <input type="checkbox"/>	2. <input type="checkbox"/>	3. <input type="checkbox"/>	4. <input type="checkbox"/>	5. <input type="checkbox"/>

RFC Example

After careful consideration of the entire record, I find the claimant has the residual functional capacity to perform light work, as defined in 20 C.F.R. § 404.1567(b) and 416.967(b), with additional limitations. She can perform work that is done from a seated or standing position, with the ability to sit for 2 hours at a time and for 6 hours in an 8-hour workday; stand for 10 minutes at a time and for 1 hour in an 8-hour workday; and walk for 10 minutes at a time and for 1 hour in an 8-hour workday. She does not require the use of an assistive device to ambulate. She can occasionally climb ramps and stairs; never climb ladders, ropes, or scaffolds; and occasionally balance, stoop, kneel, crouch, and crawl. She has no manipulative limitations. She must avoid all exposure to hazards, such as unprotected heights and dangerous machinery. She cannot perform fast-paced production requirements (defined as “constant activity, with tasks performed sequentially, in rapid succession.”).

Step 5-Other Work?

At step 5 the “burden of proof” shifts to SSA to show that work, other than what the individual performed in the past, exists in significant numbers in the national economy that he or she can make an adjustment to, considering the limiting effects of the individual's impairment, age, education, and work experience.



THE GRIDS

- Can only use the rules with a physical limitation; will not apply to a mental limitation
- Age, education, transferable skills
- Over 50
- Based only on the existence of unskilled jobs throughout the national economy at the various exertional levels

Example



- 57 year old
- Past Relevant Work: Secretary(RFC-Sedentary)
- Education: high school
- Nature of Disability: Diabetic Neuropathy

SSR 13-2P: Evaluating cases involving drug addiction and alcohol use



Drugs & Alcohol



- A Claimant shall not be considered disabled if alcoholism or drug addiction would be a contributing factor material to the determination
- Under new(ish) rule: ALJ is required to determine whether the Claimant would continue to be disabled if drugs or alcohol were removed from the picture- if the Claimant stopped using would they still be disabled?

Best evidence to use if DAA is involved

- Medical evidence during a period of abstinence



Top 10 Disability Claims Facts



Top Ten Social Security Facts

1. Over 50
2. High School Education or less
3. Strong Work History
4. Medical Support from a Specialist
5. Medical Support from a PCP
6. Medical Support from a non-acceptable medical source
7. Credible Claimant/Credible Witness
8. Lack of DAA/prescription drug use
9. No unemployment
10. Work attempts

What to look for in Medical Records and Diagnostic Tests



Treating Physician vs. Consultative Exams



Cases and Rules

- As numerous circuit courts have colorfully warned with respect to briefs filed by lawyers, “[j]udges are not like pigs, hunting for truffles buried in briefs.” *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003). This principle applies equally to an ALJ's decision: courts may not speculate as to an ALJ's findings or the basis of an ALJ's unexplained conclusions. See *Mansfield v. Kijakazi*, 2022 WL 4056244, at *5 (E.D. Cal. 2022) (“This court is neither required nor inclined to scour the record in an attempt to divine the specific basis for an ALJ's opinion.”)

Cases and Rules: Medical Evidence

A. Legal Standard

The Commissioner revised the regulations applicable to the evaluation of medical evidence for disability applications filed on or after March 27, 2017. *See* Revisions to Rules Regarding the Evaluation of Medical Evidence, 82 Fed. Reg. 5844-01 (Jan. 18, 2017).⁵ Under the revised regulations, the ALJ is no longer required to give deference to any medical opinion, including treating source opinions. *See* 20 C.F.R. §§ 404.1520c(a); 416.920c; *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022) (ALJs no longer need to “provide ‘specific and legitimate reasons’ for rejecting a treating or examining doctor’s opinion.”). Instead, the ALJ evaluates the persuasiveness of the opinions based on several factors. 20 C.F.R. §§ 404.1520c(a), 416.920c(a). These are: supportability, consistency, relationship to the claimant, specialization, and other factors. 20 C.F.R. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5). The most important factors in the evaluation process are supportability and consistency. 20 C.F.R. §§ 404.1520c(b)(2), 416.920c(b)(2).

Cases and Rules: Lay Witness

The Ninth Circuit has not yet addressed whether the revised regulations change the requirement for germane reasons to discount lay witness testimony. *See Robert U. v. Kijakazi*, 2022 WL 326166, at *7 (D. Or. Feb. 3, 2022) (noting the Ninth Circuit has not addressed the question and that courts in the circuit are split, but concluding “the ALJ must continue to give germane reasons for discounting lay witness testimony” because the new regulations did not unambiguously remove the obligation). “It is, therefore,

This Court agrees with the well-reasoned decisions holding ALJs “must continue to give germane reasons for discounting lay witness testimony” and even “under the new regulations that an ALJ’s failure to address lay testimony is error.” *Kimberly T. v. Kijakazi*, 2022 WL 910083, at *7 (D. Or. Mar. 29, 2022); *see also Kimberly H. v. Kijakazi*, 2022 WL 3585768, at *12 (D. Idaho Aug. 22, 2022) (holding the regulations clearly require the ALJ to provide more than a passing mention to lay witness statements).

New Federal Court Rules for Social Security Cases

- Outlines Specific Information that must be included in the complaint
- Eliminates the need for service/provides for electronic service to the U.S. Attorney's Office
- provides that the administrative record may serve as the answer to the complaint
- provides a briefing schedule

Rule 2. Complaint

- (a) Commencing Action.** An action for review under these rules is commenced by filing a complaint with the court.
- (b) Contents.**

 - (1)** The complaint must:

 - (A)** state that the action is brought under § 405(g);
 - (B)** identify the final decision to be reviewed, including any identifying designation provided by the Commissioner with the final decision;
 - (C)** state the name and the county of residence of the person for whom benefits are claimed;
 - (D)** name the person on whose wage record benefits are claimed; and

(E) state the type of benefits claimed.

(2) The complaint may include a short and plain statement of the grounds for relief.

Rule 3. Service

The court must notify the Commissioner of the commencement of the action by transmitting a Notice of Electronic Filing to the appropriate office within the Social Security Administration's Office of General Counsel and to the United States Attorney for the district where the action is filed. If the complaint was not filed electronically, the court must notify the plaintiff of the transmission. The plaintiff need not serve a summons and complaint under Civil Rule 4.

Rule 4. Answer; Motions; Time

- (a) **Serving the Answer.** An answer must be served on the plaintiff within 60 days after notice of the action is given under Rule 3.
- (b) **The Answer.** An answer may be limited to a certified copy of the administrative record, and to any affirmative defenses under Civil Rule 8(c). Civil Rule 8(b) does not apply.
- (c) **Motions Under Civil Rule 12.** A motion under Civil Rule 12 must be made within 60 days after notice of the action is given under Rule 3.
- (d) **Time to Answer After a Motion Under Rule 4(c).** Unless the court sets a different time, serving a motion under Rule 4(c) alters the time to answer as provided by Civil Rule 12(a)(4).

Rule 8. Reply Brief

The plaintiff may file a reply brief and serve it on the Commissioner within 14 days after service of the Commissioner's brief.

BEST RESOURCES

- www.ssa.gov
- www.nosscr.org
- www.disability-benefits-help.org
- www.labor.idaho.gov

**YOU GET
SOCIAL
SECURITY!**

**AND
YOU
GET
SOCIAL
SECURITY!**

YOU ALL GET SOCIAL

Thank you!

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